

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

STATE NATIONAL INSURANCE
COMPANY,

Plaintiff(s),

v.

MYRON HENRY LANDO,

Defendant(s).

No. C05-1617 BZ

**ORDER SCHEDULING
JURY TRIAL AND
PRETRIAL MATTERS**

MYRON HENRY LANDO,

Cross-Complainant(s),

v.

CALIFORNIA ASSOCIATED
INSURANCE BROKERS, INC.,

Cross-Defendant(s).

Following the Case Management Conference on August 22,
2005, **IT IS HEREBY ORDERED** that the Case Management Statement
is adopted, except as expressly modified by this Order. It is
further **ORDERED** that:

1. DATES

Trial Date: Monday, 5/8/2006, five days, **at 8:30 a.m.**

1 Pretrial Conference: Tuesday, 4/18/2006, at 4:00 p.m.

2 Last Day to Hear Dispositive Motions: Wednesday, 2/15/2006

3 Last Day for Expert Discovery: Friday, 1/6/2006

4 Last Day for Expert Disclosure: Friday, 12/30/2005

5 Close of Non-expert Discovery: Friday, 12/23/2005

6 2. DISCLOSURE AND DISCOVERY

7 The parties are reminded that a failure to voluntarily
8 disclose information pursuant to Federal Rule of Civil
9 Procedure 26(a) or to supplement disclosures or discovery
10 responses pursuant to Rule 26(e) may result in exclusionary
11 sanctions. Thirty days prior to the close of non-expert
12 discovery, lead counsel for each party shall serve and file a
13 certification that all supplementation has been completed.

14 In the event a discovery dispute arises, **lead counsel** for
15 each party shall meet in person or, if counsel are outside the
16 Bay Area, by telephone and make a good faith effort to resolve
17 their dispute. Exchanging letters or telephone messages about
18 the dispute is insufficient. The Court does not read
19 subsequent positioning letters; parties shall instead make a
20 contemporaneous record of their meeting using a tape recorder
21 or a court reporter.

22 In the event they cannot resolve their dispute, the
23 parties must participate in a telephone conference with the
24 Court **before** filing any discovery motions or other papers.
25 The party seeking discovery shall request a conference in a
26 letter served on all parties not exceeding two pages (with no
27 attachments) which briefly explains the nature of the action
28 and the issues in dispute. Other parties shall reply in

1 similar fashion within two days of receiving the letter
2 requesting the conference. The Court will contact the parties
3 to schedule the conference.

4 3. MOTIONS

5 Consult Civil Local Rules 7-1 through 7-5 and this
6 Court's standing orders regarding motion practice. Motions
7 for **summary judgment** shall be accompanied by a statement of
8 the material facts not in dispute supported by citations to
9 admissible evidence. The parties shall file a joint statement
10 of undisputed facts where possible. If the parties are unable
11 to reach complete agreement after meeting and conferring, they
12 shall file a joint statement of the undisputed facts about
13 which they do agree. Any party may then file a separate
14 statement of the additional facts that the party contends are
15 undisputed. A party who without substantial justification
16 contends that a fact is in dispute is subject to sanctions. A
17 Chambers copy of all briefs shall be submitted on a diskette
18 formatted in WordPerfect 6.1, 8, 9 or 10 (Windows) or
19 WordPerfect 5.1 (DOS). No motions for summary judgment shall
20 be filed until the settlement conference described in section
21 4 of this Order concludes.

22 4. SETTLEMENT

23 This case has been referred for assignment to a
24 Magistrate Judge to conduct a settlement conference within
25 sixty to ninety days, if possible. Counsel will be contacted
26 by that judge's chambers with a date and time for the
27 conference.

28 5. PRETRIAL CONFERENCE

1 Not less than thirty days prior to the date of the
2 pretrial conference, the parties shall meet and take all steps
3 necessary to fulfill the requirements of this Order.

4 Not less than twenty days prior to the pretrial
5 conference, the parties shall: (1) serve and file a joint
6 pretrial statement, containing the information listed in
7 **Attachment 1**, and a proposed pretrial order; (2) serve and
8 file trial briefs, motions in limine and statements
9 designating excerpts from discovery that will be offered at
10 trial (specifying the witness and page and line references);
11 (3) exchange exhibits, agree on and number a joint set of
12 exhibits and number separately those exhibits to which the
13 parties cannot agree; (4) deliver all marked trial exhibits
14 directly to the courtroom clerk, Ms. Scott; (5) deliver one
15 extra set of all marked exhibits directly to Chambers; and (6)
16 submit all exhibits in three-ring binders. Each exhibit shall
17 be marked with an exhibit label as contained in **Attachment 2**.

18 No party shall be permitted to call any witness or offer
19 any exhibit in its case in chief that is not disclosed at
20 pretrial, without leave of Court and for good cause.

21 Lead trial counsel for each party shall meet and confer
22 in an effort to resolve all disputes regarding anticipated
23 testimony, witnesses and exhibits. All motions in limine and
24 objections to witnesses or exhibits will be heard at the
25 pretrial conference. Not less than ten days prior to the
26 pretrial conference, the parties shall serve and file any
27 objections to witnesses or exhibits or to the qualifications
28 of an expert witness. Motions in limine shall be filed and

1 served not less than twenty days prior to the conference.
2 Oppositions shall be filed and served not less than ten days
3 prior to the conference. There shall be no replies.

4 Not less than twenty days prior to the pretrial
5 conference the parties shall serve and file requested voir
6 dire questions, jury instructions, and forms of verdict. The
7 following jury instructions from the *Manual of Model Civil*
8 *Jury Instructions for the Ninth Circuit* (1997 ed.) will be
9 given absent objection: 1.1-1.12, 2.1-2.2, 3.1-3.3, 3.5-3.8,
10 4.1-4.3. Do not submit a copy of these instructions. Counsel
11 shall submit a joint set of case specific instructions. Any
12 instructions on which the parties cannot agree may be
13 submitted separately. The Ninth Circuit Manual should be used
14 where possible. Each requested instruction shall be typed in
15 full on a separate page with citations to the authority upon
16 which it is based. Proposed jury instructions taken from the
17 Ninth Circuit Manual need only contain a citation to that
18 source. Any modifications made to proposed instructions taken
19 from a manual of model instructions must be clearly indicated.
20 In addition, all proposed jury instructions should conform to
21 the format of the Example Jury Instruction attached to this
22 Order. Not less than ten days prior to the pretrial
23 conference, the parties shall serve and file any objections to
24 separately proposed jury instructions.

25 Jury instructions that the Court has given in prior cases
26 may be downloaded from the Northern District website at
27 **<http://www.cand.uscourts.gov>**. (Instructions are located on
28 the "Judge Information" page for Magistrate Judge Zimmerman.)

1 The Court will generally give the same instructions in cases
2 involving similar claims unless a party establishes, with
3 supporting authorities, that the instruction is no longer
4 correct or that a different instruction should be given.

5 All proposed jury instructions, motions in limine, forms
6 of verdict and trial briefs shall be accompanied by a floppy
7 diskette containing a copy of the document formatted in
8 WordPerfect 6.1, 8, 9 or 10 (Windows) or WordPerfect 5.1
9 (DOS).

10 At the time of filing the original with the Clerk's
11 Office, two copies of all documents (but only one copy of the
12 exhibits) shall be delivered directly to Chambers (Room 15-
13 6688). Chambers' copies of all pretrial documents shall be
14 three-hole punched at the side, suitable for insertion into
15 standard, three-ring binders.

16 Dated: August 23, 2005

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18 Bernard Zimmerman
United States Magistrate Judge

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EXAMPLE PROPOSED JURY INSTRUCTION
For Chambers of Magistrate Judge Zimmerman

A proposed jury instruction should contain the following elements in the following order: (1) the name of the party submitting the instruction; (2) the title of the instruction; (3) the text of the instruction; (4) the authority for the instruction; (5) blank boxes for the Court to note whether it gives the instruction, refuses to give it, or gives it as modified. The following proposed instruction contains these elements.

_____'s Proposed Instruction No. _____.
(Party)

[Title]

[Text]

[Authority]

_____ GIVEN _____ REFUSED _____ GIVEN AS MODIFIED

ATTACHMENT 1

The parties shall file a joint pretrial conference statement containing the following information:

(1) The Action.

(A) Substance of the Action. A brief description of the substance of claims and defenses which remain to be decided.

(B) Relief Prayed. A detailed statement of each party's position on the relief claimed, particularly itemizing all elements of damages claimed as well as witnesses, documents or other evidentiary material to be presented concerning the amount of those damages.

(2) The Factual Basis of the Action.

(A) Undisputed Facts. A plain and concise statement of all relevant facts not reasonably disputable, as well as which facts parties will stipulate for incorporation into the trial record without the necessity of supporting testimony or exhibits.

(B) Disputed Factual Issues. A plain and concise statement of all disputed factual issues which remain to be decided.

(C) Agreed Statement. A statement assessing whether all or part of the action may be presented upon an agreed statement of facts.

(D) Stipulations. A statement of stipulations requested or proposed for pretrial or trial purposes.

(3) Trial Preparation.

A brief description of the efforts the parties have made to resolve disputes over anticipated testimony, exhibits and

witnesses.

(A) Witnesses to be Called. In lieu of FRCP 26(a)(3)(A), a list of all witnesses likely to be called at trial, other than solely for impeachment or rebuttal, together with a brief statement following each name describing the substance of the testimony to be given.

(B) Estimate of Trial Time. An estimate of the number of court days needed for the presentation of each party's case, indicating possible reductions in time through proposed stipulations, agreed statements of facts, or expedited means of presenting testimony and exhibits.

(C) Use of Discovery Responses. In lieu of FRCP 26(a)(3)(B), cite possible presentation at trial of evidence, other than solely for impeachment or rebuttal, through use of excerpts from depositions, from interrogatory answers, or from responses to requests for admission. Counsel shall state any objections to use of these materials and that counsel has conferred respecting such objections.

(D) Further Discovery or Motions. A statement of all remaining motions, including motions in limine.

(4) Trial Alternatives and Options.

(A) Settlement Discussion. A statement summarizing the status of settlement negotiations and indicating whether further negotiations are likely to be productive.

(C) Amendments, Dismissals. A statement of requested or proposed amendments to pleadings or dismissals of parties, claims or defenses.

1 (D) Bifurcation, Separate Trial of
2 Issues. A statement of whether
3 bifurcation or a separate trial
of specific issues is feasible
and desired.

4 (5) **Miscellaneous.**

5 Any other subjects relevant to the trial of the action,
6 or material to its just, speedy and inexpensive determination.
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ATTACHMENT 2

USDC
Case No. CV05-01617 BZ
JOINT Exhibit No. _____
Date Entered _____
Signature _____

USDC
Case No. CV05-01617 BZ
JOINT Exhibit No. _____
Date Entered _____
Signature _____

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Date Entered _____
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Date Entered _____
Signature _____

USDC
Case No. CV05-01617 BZ
PLNTF Exhibit No. _____
Date Entered _____
Signature _____

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DEFT Exhibit No. _____
Date Entered _____
Signature _____

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